

Prosecuting an Auto Theft Case

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APAAC Training Center
Phoenix, Arizona



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Prosecuting an
Auto Theft Case


Practical Points to Prepare a Prosecution

March 9, 2018




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Legal disclaimer

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Charging Issues


Theft of Means of Transportation ARS 13-1814

There are 5 different ways to prove Theft of Means of Transportation; as prosecutors, we typically focus on just 2 of those subsections



Common Definitions


- **Control:** means to act so as to exclude others from using their property except on Defendant's own terms (doesn't have to mean driving...)
- **Vehicle:** Trailers, boats, planes, cars, trucks (you get the idea). But NOTE: does not include devices moved by human power or used exclusively upon stationary rails or tracks (so no bikes or trains)



ARS 13-1814(A)(1)

Defendant, without lawful authority, knowingly controlled another person's means of transportation **with the intent to permanently deprive** the person of the means of transportation

- Note the 'intent to permanently deprive' element: this can be tricky to prove
- Trial Hint: This is often a good sub-section to use in conjunction with Chop Shop or TSP charges



ARS 13-1814(A)(5) – Most common used

Defendant controlled another person's means of transportation knowing or having reason to know that the property is stolen

- This subsection is often easier to prove; not necessary to prove that the defendant is **the one who stole** the car.
- Trial hint: don't forget the permissible inference under ARS 13-2305 that applies to this TOMOT subsection only

ARS 13-2305 – Permissible Inferences

- 1. Proof of possession of property recently stolen, unless satisfactorily explained, may give rise to an inference that the person in possession of the property was aware of the risk that it had been stolen or in some way participated in its theft.
- 2. Proof of the purchase or sale of stolen property at a price substantially below its fair market value, unless satisfactorily explained, may give rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
- 3. Proof of the purchase or sale of stolen property by a dealer in property, out of the regular course of business, or without the usual indicia of ownership other than mere possession, unless satisfactorily explained, may give rise to an inference that the person buying or selling the property was aware of the risk that it had been stolen.
- **Very useful but be careful not to shift the State's burden on to the Defendant. *State v. Mohr*, 150 Ariz. 564 (1986)

ARS 13-1814(A)(3) – Material Misrepresentation

Defendant knowingly obtains another person's means of transportation by means of any material misrepresentation with intent to permanently deprive the person of the means of transportation

- While there is the "intent to permanently deprive" element to this subsection, it is useful to keep this in mind when some sort of fraud had been perpetrated by the defendant – such as material misrepresentation on an application for a vehicle loan or a vehicle rental

ARS 13-1814(A)(2) and (A)(4)

- These other 2 sub-sections are very rarely used
- (A)(2) is where the defendant converts for an unauthorized term or use the victim's means of transportation that has been entrusted to or placed in the defendant's possession for a limited, authorized term or use
- (A)(4) is where the defendant comes into control of another person's means of transportation that has been lost or misdelivered... without reasonable efforts to notify the true owner

ARS 13-1803 – UUMOT

Without intent to permanently deprive, defendant

- 1) Knowingly takes unauthorized control over another person's means of transportation
This is a class 5 felony
- 2) Knowingly is transported or physically located in a vehicle that defendant knows or has reason to know is in the unlawful possession of another person (i.e. passenger of the stolen car)
This is a class 6 felony

We typically use (A)(1) there is some relationship between the victim and the defendant (roommates, family members, etc)

ARS 13-1806 – Failure to Return a Rental Vehicle

Defendant knowingly, without notice to and permission of lessor, failed to return a rented motor vehicle, within 72 hours of the date and time on which return of the property was required

- **NOTE:** this statute has built in defenses (defendant was physically incapacitated and unable to request or obtain permission to retain OR the vehicle was in such condition, through no fault of the defendant, that it could not be returned to the lessor within such time)
- Statute also requires that the contract include the date and time the property is required to be returned and the maximum penalties if it is not returned within 72 hours of that date and time

Additional charges common in Auto Theft cases

- Trafficking in Stolen property – ARS 13-2307
- Chop Shop – ARS 13-4702 (to be discussed in greater depth this afternoon)
- Theft – ARS 13-1803
 - Theft of an Engine – under each of the 5 subsections of theft and is a class 4 felony
- Burglary in the 3rd Degree – ARS 13-1506
- Possession of Burglary Tools – ARS 13-1505
- Unlawful Failure to Return a Motor Vehicle Subject to a Security Interest – ARS 13-1813**
- Felony Flight – ARS 28-622.01
- Fake License Plate- ARS 25-2531(B)

Additional charges common in Auto Theft cases continued

- Criminal Damage – ARS 13-1602
- Misconduct Involving Weapons – ARS 13-3102
- Fraud Schemes – ARS 13-2310
- Altering a Serial or Identification Number – ARS 28-4593 and ARS 28-2531
 - We will discuss this in more depth this afternoon during the chop shop discussion
- Robberies
 - Simply – ARS 13-1902
 - Aggravated Robbery – ARS 13-1903
 - Armed Robbery – ARS 13-1904
 - TOMOT is a lesser included of Armed Robbery – *State v. Garcia, 235 Ariz. 627 (2014)*
 - Use "to wit" if possible to charge both TOMOT and Armed Robbery
- Aggravated Assault – ARS 13-1204

Common Issues in Charging

- Proving the mens rea elements
 - Knowing or having reason to know
 - Intent to permanently deprive
- Examples
 - Screwdriver in ignition
 - Vehicle stolen just a few hours earlier
 - Vehicle is recovered as it is being dismantled or already dismantled
- Washing titles/VIN switched vehicles

Morning Break

Practical Prosecution Points



Or, what to do once they rejected the plea

Voir Dire for *your* case

Joyriding or Domestic TOMOT or Car quickly recovered
borrowed a car without permission?
waste of time?

Defendant flees from police

warrants?

license suspended/revoked?

is it ever okay to run from police?

Rental Car case

Who has Rented a car?

Who has extended a rental agreement?

Driven someone else's rental car?

Voir Dire for *your* case

Bought the car

who has bought or sold a car?

bought or sold online?

Abandoned title

bought a car without a title?

sought an abandoned title?

Sleeping in the car

homelessness?

Found the car

control vs intent to deprive

Voir Dire for *your* case

Trailer/Golf Cart/Boat

definition of "vehicle"

Defendant not Caught Driving the Car

definition of "control"

Multiple Defendants

accomplice liability

Ignition broken or circumvented

Do own car maintenance?

Owned a car with broken ignition?

Auto Theft Specific Trial Issues



What is a "Means of Transportation"?

Means of transportation means any vehicle.


"Vehicle" means a device in, upon or by which any person or property is or may be transported or drawn upon a highway, waterway or airway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.

See *State v. Streck* and *State v. Blevins*

What is a
“Means of Transportation”?




What is a
“Means of Transportation”?



“Control”

“Control or exercise control means to act so as to exclude others from using their property except on the defendants own terms.”

Moving it so V cant find it
Possession of the keys
Removing the tires
and wheels
Drive it like you stole it



Intent to Permanently Deprive

Deprive means to:

1. withhold the property interest of another permanently; *or*
2. withhold the property interest of another for so long a time period that a substantial portion of its economic value or usefulness or enjoyment is lost; *or*
3. withhold the property interest of another with the intent to restore it only upon payment of any reward or other compensation; *or*
4. transfer or dispose of the property interest of another so that it is unlikely to be recovered.



Knowing, or reason to know, the vehicle is stolen.

- Visual Indicia
- How did they use the car?
- How did they treat the car?
- How/where did they get the car?
- Going to return it? When? How?



Knowledge of switched VIN or license plate, washed title

- Admissions
- Fingerprints
- MVD history
- Cell phone records



Jiggle Keys



Jiggle Keys

- Have to jiggle the key in the ignition
- Key make doesn't match the car
- Key doesn't unlock doors or trunk
- Multiple jiggle keys

They have the key/fob

- Recently stolen?
- Erratic driving?
- Where did they get the car?
- Homeless guy with 2018 Mercedes?





Failure to Return a Rental vs. Theft of Means vs Unlawful Use of Means




- Rental Contract and Contact Log
- Length of Time
- Defendant Statements

Common Defenses





I Didn't Steal the Car





I Didn't Steal the Car

- Did they know it was stolen?
- Did they have reason to know it was stolen?



Bought it from OfferUp

- Title or Bill of Sale
- Cost vs value
- Subpoena OfferUp/craigslist records
- MVD buying/selling records



Bought it from OfferUp

Proof of the purchase or sale of stolen property at **a price substantially below its fair market value**, unless satisfactorily explained, may give rise to an inference that the defendant was aware of the risk that it had been stolen.


I Didn't Know it was Stolen - Inferences

In determining whether the State has proved the defendant guilty beyond a reasonable doubt, you may consider any evidence of the defendant's **running away, hiding, or concealing evidence**, together with all the other evidence in the case. Running away, hiding, or concealing evidence after a crime has been committed does not by itself prove guilt.

Proof of **possession of property recently stolen**, unless satisfactorily explained, may give rise to an inference that the defendant was aware of the risk that such property had been stolen or in some way participated in its theft.

Got the Car from Julio Down by the Schoolyard

- Title or Bill of Sale
- Cost vs value
- Julio's last name, address, phone number



Joyriding and Unlawful Use of Means

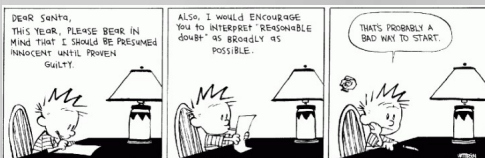


Joyriding and Unlawful Use of Means



"You killed the car"

Reasonable Doubt



Reasonable Doubt



Reasonable Doubt and Common Sense



"Wait! Wait! Cancel that. ... I guess it says 'help?'"



Let the Judge hear from the victim
on how this impacted their life

Lunch Break

Let's Talk CHOP SHOPS

NOTE: This isn't a type of steak!



<https://www.youtube.com/watch?v=mEsEGvekCrA>

Definitions

- 1. "Chop shop" means any building, lot or other premises in which one or more persons alters, destroys, disassembles, dismantles, reassembles or stores at least one motor vehicle or watercraft or two or more motor vehicle or watercraft parts from at least one vehicle or watercraft that the **person or persons knows were obtained by theft, fraud or conspiracy to defraud with the intent to:**
- (a) Alter, counterfeit, deface, destroy, disguise, falsify, forge, obliterate or remove the identity of the motor vehicles or motor vehicle parts, including the vehicle identification number **for the purpose of misrepresenting or preventing the identification of the motor vehicles or motor vehicle parts.**
- (b) Sell or dispose of the motor vehicles or motor vehicle parts.

Definitions Continued

- 2. "Motor vehicle" means any **self-propelled vehicle**.
This means that Trailers are excluded!!
- 3. "Unidentifiable" means that auto theft detectives cannot establish the uniqueness of a motor vehicle or motor vehicle part.
- 4. "Vehicle identification number" means the number that the manufacturer or the United States or a state department of transportation assigns to a motor vehicle for the purpose of identifying the motor vehicle or a major component part of the motor vehicle.



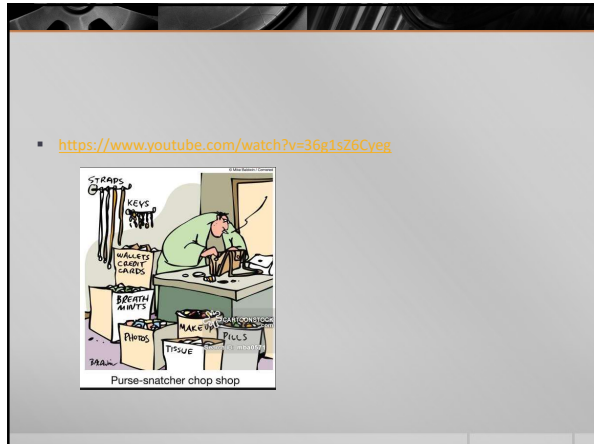
ARS 13-4702 – Conducting a Chop Shop

- A. A person shall not knowingly:
- 1. Own or operate a chop shop – THE BIG KAUNA (Class 2 felony)

ARS 13-4702 – Conducting a Chop Shop Cont.

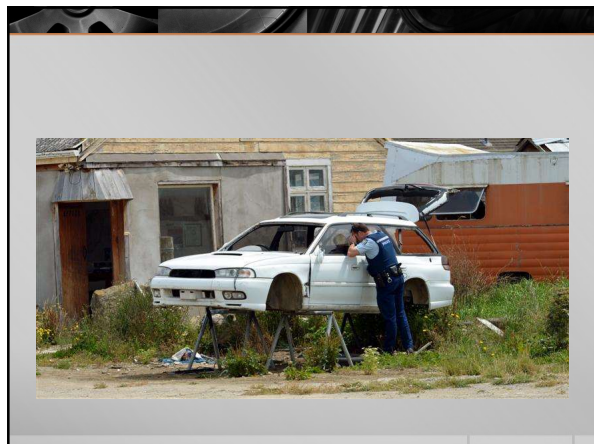
- 2. Transport a motor vehicle or motor vehicle part to or from a chop shop.
- 3. Sell or transfer to or purchase or receive from a chop shop a motor vehicle or motor vehicle part.
- 4. Remove, destroy, deface or otherwise alter a vehicle identification number **with the intent to misrepresent or prevent the identification of the motor vehicle or motor vehicle part.**
- 5. Buy, sell, transfer or possess a motor vehicle or motor vehicle part **knowing that the motor vehicle identification number, which was placed on the motor vehicle or motor vehicle part by the manufacturer, has been removed, destroyed, defaced or otherwise altered.**
- *All of these are class 4 felonies*

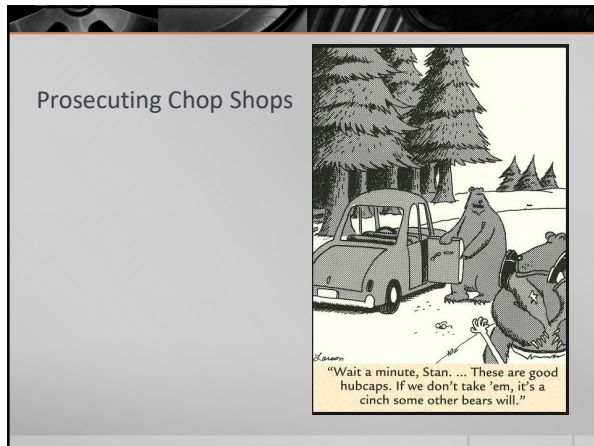


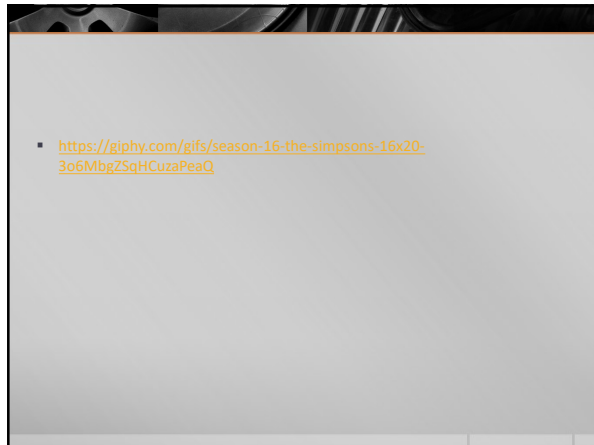


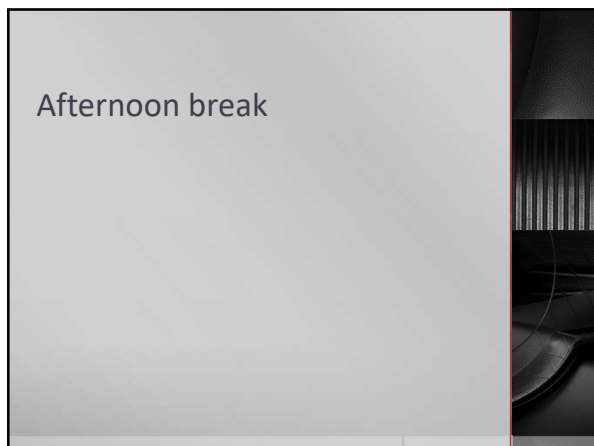
What makes prosecuting chop shops difficult?

- Look at the definition of “Chop Shop”
 - Must prove that the person knew the items were obtained by theft of fraud
 - Hard to do when the stolen vehicles/parts are mixed in with legit vehicles and parts
- The statute itself is poorly worded and hard to explain to anyone... let alone a jury
- Most chop shops operate under the guise of a legit car shop



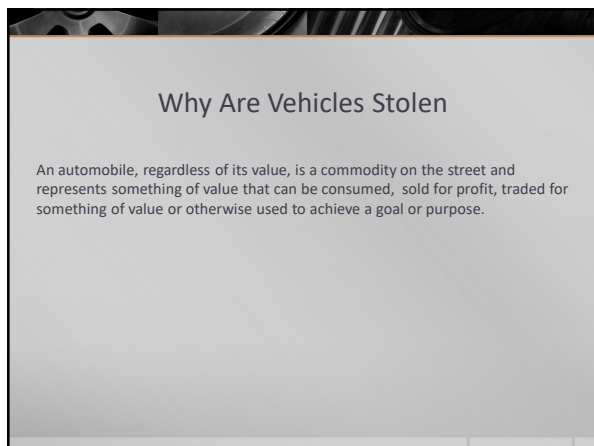












Vehicle Sharing Apps

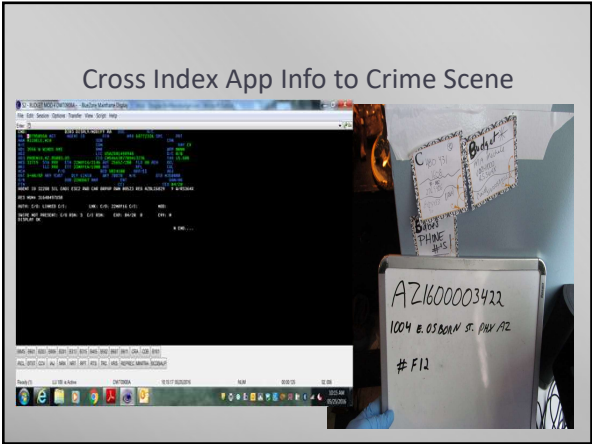
- **Turo.com**, formerly **RelayRides**, is a company that operates a [peer-to-peer car sharing](#) marketplace. It allows private car owners to rent out their vehicles via an online and mobile interface. The company is based in **San Francisco**.
- [Getaround— Peer-to-peer car sharing and local car rental](#)
- <https://www.getaround.com/>
- **Social car sharing**: Rent cars by the hour from people around you. Start renting out yours today and earn cash. ASU and Universities

Online App Reservation

- U-Haul Online Rental App (can do from cell phone)
- Rental Car Company—Fast Break at Airports (computer)
 - On-line Profile with Uploaded Driver's License
 - Credit Card that will Run/or VISA Debit with \$\$
 - Reserve On-Line/Pick Up at Airport or U-Haul
 - Pick-Up/Drop Off at Will

Rental Company Theft/Frauds: Verdugo Crime Group

- AVIS/Payless, Enterprise, Hertz etc...
- Fraudulent Rental(s): **FAST BREAK**
 - False or Alter Identification on Contracts:
 - Use variants of name: Examples: Mia Michelle Verdugo
Mia Michelle, Michelle Verdugo
 - Use variants of address: 351 E. Windsor Ave.
3351 E. Winds Ave.
 - Use variants of e-mail address:
windsorproject@gmail.com
windsorproject21@gmail.com



U-Haul Rental Thefts M.O.'s

- Forged/False, Altered ID's on Contracts:
 - Cross index with known(s) on contract to prove false i.e., license , address, cell #
- U-Haul rental system compromised by suspects
- Debit Cards with \$\$ used \$20 per Day
 - Sufficient funds on account for contract rental period
- Stolen Credit Cards
- Objective is to obtain cheap transportation, sell on street, part out, or VIN Switch



Search Warrant(s)

- Critical to successful prosecution
- Cases become Fraud Schemes, Forgery, ID theft and Computer Crimes
- Often person behind the crime is using others as shill
- Only way to stop is go after the Base of Operations

Cell Phone Exploitation

Court Order for cell connectivity data to establish:

- Latitude/Longitude of cell phone tower hits during time line of events i.e., incriminates or exonerates.
 - Rural = 10-20 miles plus Azimuth
 - Municipal = 2-5 miles plus Azimuth
- Connectivity data that identifies cell to cell connection during time line of events
 - These crimes require co-conspirator(s) especially burn cases
 - Ingress and Egress from crime scene

Prosecution Perspectives

- Cell phone activity can be invaluable
- Shows the location of the PHONE during the relevant time frame
- Still need to place the cell phone with the actual person
- Eyewitness testimony
- Police ask if anyone else ever uses the phone or carries the phone
- Look at the contact list/ frequently called people/ Did suspect communicate with those individuals in and around the time frame of the offenses/ If so, makes it more likely suspect was the one in possession of the phone
- Link to other suspects' cell phones also involved in the crime
- Can look at whether they are in that area outside of time of crime
- Towers can cover more than one location involved in your case/ Account for those calls and look for corroborating evidence that they were in one location

BMW and Mercedes Benz


Key(s):

- Track Last Time of Usage
- Track Ending Mileage of Use
- Must be Read at Dealership
- Erase Upon Download
- Get Copy and Witness
- Make sure you ID which key insured used last prior to theft.

- Vehicles built after 1995 contain RFID [transponder chips](#).
- Radio Frequency Identification Devices--disarm a vehicle [immobilizer](#). [Engine control unit](#) (ECU) of vehicle sends an electronic message to the RFID transponder chipped key.




- Info verifying stolen from keys/ insurance fraud
- Rental car vehicle scam




In-car computer systems

- Newer cars with computer systems
- May provide a lot of information
- GPS
- Calls
- Phone plugged in/download contacts, info
- Even seat position




BAIT CARS



- Great tool
- Personnel to monitor
- Maintain equipment, camera and car
- Need someone to testify about equipment
- Some departments have stopped their bait car programs

BODY/ DASH CAMERAS

- Pros and cons
- Perspective/ Angles
- Sound issues
- Labor intensive discovery procedures/ Redaction



Theft of Means is Not Just a Property Crime



Why We Proactively Pursue TOMOT

- Crime with a Victim. It is our duty!
- TOMOT facilitates other Street Crimes
 - Drug trafficking/Smuggling
 - Human Smuggling
 - Weapons Violation/Home Invasion/Car Jacking
 - Computer Fraud
 - Burglary/Theft/Organized Retail Theft
 - Identity Theft/Fraud Schemes/Forgery
 - Street Racing
 - Officer Involved Shootings
- We can Impact the Daily Safety of Our Community by Using TOMOT as a means to put Career Criminals in Prison.

Swarming

Often Parent Complicit

- Juvenile Offenders (West side gang members)
 - Youngest Offender 14 years.
- 4-8 in car; often stolen/staging cars
 - Target Affluent Neighborhoods/Gated (Valley Wide)
 - Target open vehicles
 - Guns
 - Keys
 - Property
- Incidents of
 - Car Jacking
 - Home Invasion
 - Shooting at Victim

INCREASE IN VIOLENCE

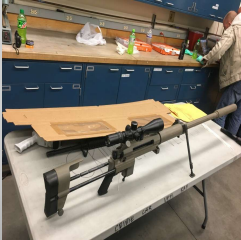
- Cars are harder to steal and operate without the key fobs
- Violence level is increasing
- More carjackings
- Last assessment, 33% of cars stolen were taken using violence




Recent Cases

FEB. 22, 2018 GERALDO BAUTISTA


- Sept. 18, 2017 Saucedo (swarming)






MOVABLE NATURE OF VEHICLES

- Proximity to Mexico border
- Proximity to several reservations
- Can move across cities/ counties/ states quickly



Closing Comments

- Web-Application Crimes
 - Current Trend/Not Going Away
 - Millennial Criminals Using Apps
 - Non-Millennial Investigators, Administrators Must Adapt
- Millennial Investigators/Prosecutors Must Access this Data Forensically
 - Become Fraud Investigator as well as Street Crime Cop/Prosecutor
- TOMOT is a crime that can be Exploited to Increase Public Safety/Interdict Career Criminals before they commit Violent Crime
- Prepare for the discovery/review/redaction issues of voluminous material
- Prosecutor: You may often have to build a case on Circumstantial Evidence and create a Mosaic for a Jury to Convict Millennial Criminals



For Questions

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